

September 21, 2005

Ex Parte

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TWM-204
Washington, DC 20554

**Re: In the Matter of Federal-State Joint Board on Universal Service, CC
Docket No. 96-45**

Startec Global Communications Corporation ("Startec") submits this *ex parte* letter to address the manner in which the Commission should assess universal service on services that do not use a telephone number.

Startec agrees with Verizon and other carriers that for services that do not use a telephone number, the Commission should continue to assess universal service based on revenue. Startec, however, wishes to remind the Commission that assessments based on revenue must continue to exempt international end-user telecommunications revenue where interstate end-user revenue constitutes less than the combined interstate and international end-user revenue. *See* 47 C.F.R. §§ 54.706, 54.709

The Commission created the limited exception for international revenue in *In the Matters of Federal-State Joint Board On Universal Service*, Sixteenth Order On Reconsideration, 15 FCC Rcd 1679 (1999). In that Order, the Commission determined that a carrier need not pay universal service support on international revenue where interstate revenue comprises less than 8 percent of combined interstate and international revenue.

The limited exception was created in response to *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999). In the case, the court reviewed a Commission decision to include international revenues in the universal service base. In particular, the court examined whether including such revenue in the base in situations where the carrier would "be forced to pay more in universal service contributions than it can generate in interstate revenues" violated section 254(d)'s requirement that universal service contributions be "equitable and nondiscriminatory." *Id.* at 433-434. The court concluded that assessing universal service on international revenues under these circumstances was inequitable. *Id.* at 434-435.

As indicated above, in response to the court's decision, the Commission modified "sections 54.706 and 54.709 of [the] rules to exclude from the contribution base the international end-user telecommunications revenues of each interstate telecommunications provider whose interstate end-user telecommunications revenues constitute less than 8 percent of its combined interstate and international end-user telecommunications revenues." *In the Matters of Federal-State Joint Board On Universal Service*, Sixteenth Order On Reconsideration, 15 FCC Rcd 1679, ¶ 15 (1999). The Commission explained that

[T]he international revenues exception adopted here is responsive to the court's concerns regarding the fairness of our assessment methodology in that it will permit a contributor that derives the substantial majority of its revenues from the provision of international services to calculate its contribution to universal service based solely on its domestic interstate revenues. We conclude that this exception further addresses the court's concerns by ensuring that a provider is not assessed a contribution in an amount exceeding that provider's annual interstate end-user telecommunications revenues.

The court's decision in *Texas Office of Public Utility Counsel v. FCC* remains good law. Accordingly, to the extent that the Commission continues to assess universal service based on revenue, it must continue to apply the exception. The Commission properly observed in *In the Matters of Federal-State Joint Board On Universal Service*, 15 FCC Rcd 1679 that "[i]n order to address the court's concerns . . . [we] must necessarily exclude a certain amount of international revenue from the contribution base." *Id.* ¶ 26. This conclusion is just as valid today as it was then.

Pursuant to section 1.1206, one electronic copy of this *ex parte* letter has been filed in the above referenced proceeding.

Sincerely,



Rob Felgar
Corporate Counsel